

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of

SAMUEL AVANT, Director
of

American Bank of Oklahoma
Collinsville, Oklahoma

Order No. **MWR-99-11**

Date: **August 19, 1999**

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed **SAMUEL AVANT** ("Respondent"), Director of American Bank of Oklahoma, Collinsville, Oklahoma ("American") (OTS Docket No. 14577), that grounds exist to initiate an administrative civil money penalty assessment proceeding against him pursuant to 12 U.S.C. § 1818(i);¹ and

WHEREAS, Respondent desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

1. **Jurisdiction.**

- (a) American is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c);
- (b) Respondent is a director of American, and is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u); and
- (c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative civil money penalty assessment proceeding against such a savings association or its institution-affiliated parties. Therefore, Respondent is subject to the jurisdiction of the OTS to initiate and maintain a civil money penalty assessment proceeding against him pursuant to 12 U.S.C. § 1818(i). The Director of the OTS has delegated to the Regional Director of the Midwest Region of the OTS or his designee ("Regional Director") the authority to issue orders of assessment of civil money penalties where the individual has consented to the issuance of the order.

2. **OTS Findings of Fact.**

The OTS finds that:

- (a) Respondent, as a director of American, caused American to violate 12 C.F.R. § 563.161 by failing to take reasonable action to ensure adequate board oversight

of American's management, which failure contributed to American's failure to maintain safe and sound management, resulting in:

- (i) American's excessive rate of growth, which rate was substantially in excess of projections of American's business plan;
 - (ii) American's failure to obtain proper documentation (including financial statements and other critical documentation) needed to support numerous loans made by American, including documentation required by American's loan policies; and
 - (iii) American's failure to conduct proper inspections prior to American's periodic disbursements on construction loans and failure to conduct proper, monthly inspections on dealer-floor-plan loan arrangements.
- (b) Respondent, as a director of American, caused a violation 12 C.F.R. § 563.176(a) by failing to make a reasonable attempt to get American's board of directors to review American's interest-rate-risk exposure;
- (c) Respondent, as a director of American, caused American to violate 12 C.F.R. § 563.161 by failing make a reasonable attempt to get American's board to establish parameters that would define for American's management an acceptable level of interest-rate risk for American.

3. **Consent.**

Respondent consents to the issuance by the OTS of the accompanying Consent Order of Assessment of Civil Money Penalties ("Order"). Respondent further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. **Finality.**

The Order is issued under 12 U.S.C. § 1818(i). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. **Waivers.**

Respondent waives the following:

- (a) the right to be served with a written notice of assessment of civil money penalties against him as provided by 12 U.S.C. § 1818(i);
- (b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(i);
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and

(e) the right to assert this proceeding, his consent to issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Indemnification.

Respondent represents that he has not received, directly or indirectly, any sums from American for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with the issuance of the Order. Respondent shall neither cause nor permit American (or any successor institution, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to Respondent relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from American (or any successor institution, subsidiary or service corporation thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of Respondent in connection with this action, Respondent agrees promptly to notify the OTS of the receipt of such payments and

to return such payments without delay to American (or the successor institution, subsidiary or service corporation thereof).

7. Other Governmental Actions Not Affected.

Respondent acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, pertaining to excessive growth, inadequate documentation, lack of proper inspections, and interest-rate-risk, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Respondent that arise pursuant to this action or otherwise and that may be or have been brought by the OTS or another governmental entity.

8. Other Actions, Proceedings, and Parties

This Stipulation and Consent and the accompanying Order are issued solely to settle this proceeding. By entering into this Stipulation and Consent, the Respondent acknowledges and agrees explicitly to the following provisions:

- (a) Respondent acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Respondent's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only. By signing this document, Respondent agrees that he shall not assert the assessment or payment of this penalty as the basis for a claim

of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

- (b) This Stipulation and Consent, the Order and the payment by Respondent of any monies or the providing of any financial relief as contemplated by the Order does not release, discharge, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Respondent that arise pursuant to this action or otherwise, and that may be or have been brought by the Federal Deposit Insurance Corporation or any other governmental entity other than the OTS.

9. **Miscellaneous.**

- (a) The construction and validity of this Stipulation and Consent and the Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and Consent and the Order shall also mean any of the OTS' predecessors, successors, and assigns;
- (c) The section and paragraph headings in this Stipulation and Consent and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation and Consent or the Order;
- (d) The terms of this Stipulation and Consent and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and

(e) This Stipulation and Consent and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, Respondent executes this Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalties, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: Samuel J. Avant
SAMUEL AVANT

Frederick R. Casteel
Frederick R. Casteel
Regional Director
Midwest Region

Dated: 8-2-99

Dated: 8-19-99

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

SAMUEL AVANT, Director)
of)

American Bank of Oklahoma)
Collinsville, Oklahoma)

Order No. **MWR-99-11**

Date: **August 19, 1999**

CONSENT ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, **SAMUEL AVANT** ("Respondent") has executed a Stipulation and Consent to the Issuance of an Order of Assessment of Civil Money Penalties ("Stipulation"); and

WHEREAS, Respondent, by his execution of the Stipulation, has consented and agreed to the issuance of this Consent Order of Assessment of Civil Money Penalties ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. § 1818(i).

NOW THEREFORE, IT IS ORDERED that:


1. Within ten (10) calendar days of the date of this Order, Respondent shall pay to the Office of Thrift Supervision the sum of One Thousand Dollars (\$1,000.00), by tendering a certified check or bank draft made payable to the order of the Treasurer of the United States. The check or bank draft and a copy of the Order shall be delivered, together with a cover letter stating the name of the association, to the following address: Controller's Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC

20552. A copy of the check or bank draft and the cover letter shall be provided by U.S. Mail to David W. Dixon at 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75029-2010.

2. The Stipulation is made a part hereof and is incorporated herein by this reference.

3. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Frederick R. Casteel
Regional Director
Midwest Region